

# Pioneer Cable, Inc.

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July 9, 1993

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Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
1919 M Street NW  
Washington DC 20554

Dear Ms. Searcy:

Enclosed please find ten copies of my Petition for Reconsideration. I was misinformed as to the deadline of this document and would appreciate your acceptance of this late filing.

Thank you.

Sincerely,



Stanley M. Searle  
President

SMS:cas

Enclosures: A/S

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July 9, 1993

The Commission's Report and Order of May 3, 1993 is, with respect to rate-setting directives, incomplete and lacking in statistical basis. It does not comply fully with the 1992 Cable Act nor, in some respects, with legal precedent or the U.S. Constitution.

It is incomplete because the alternative rate setting mechanism, "cost-of-service", is alluded to without any specificity whatsoever. The Report and Order clearly lacks supporting statistical data, in that information was not gathered on a cross-section of systems which have, over time, been subjected to so-called "effective competition," nor were the disproportionate operating costs of small or rural cable systems taken into account. Because of the insufficiency of the Commission's Notice of Proposed Rulemaking this petition provides my first opportunity to direct the attention of the Commission to the very serious flaws in the Report and Order.

BENCHMARK FORMULA FAILS TO CONSIDER COSTS OR "REASONABLE  
PROFIT" AS REQUIRED BY THE 1992 CABLE ACT

I have personally been involved in three overbuild situations, that is, cable systems which a competitive cable company either overbuilt or threatened to overbuild. The company of which I am president, Pioneer Cable, Inc.,

received and responded to the Commission's survey. However, the survey did not provide an opportunity to relate first-hand experience in those systems which faced such "effective competition." Any straight-forward application of the "effective competition" rationale must take into account what really happens in these "cable turf wars." For example:

In Breckenridge, Colorado during the early

In Dixon, Missouri in the early eighties, where our company served about 540 customers, we were given an ultimatum by a larger operator in a nearby town. We could sell the system to him at 30 percent below the prevailing market price or face an overbuild. We took his offer rather than risk a costly bloodbath.

Conclusion: once again, the so-called "effective competition" did not result in two or more companies, providing service on a sustainable basis. From previous experience we knew that we would not be able to charge enough to break even in competition with an overbuild.

Regardless of how the Commission's theoreticians think the marketplace should operate, the facts indicate that what is termed "effective competition" usually drives one of the competitors out of business. Rates are always depressed below a sustainable level during this process.

Even though current and historical examples of what happens to cable rates and profits in an overbuild or "effective competition" situation were evidently not explored by the Commission's researchers, ordinary common sense should suggest that a "price war" is likely to occur.

~~For example, as to the Commission's Report and Order~~

## CONSTITUTION AND CABLE ACT PROVISIONS VIOLATED

The Fifth Amendment of the Constitution is violated by the arbitrary and unreasonable "benchmark rate" scheme. Provisions of the 1992 Cable Act, with respect to permitting a fair rate of return, are also violated.

Basing subscriber rate limitations on program sources and subscriber numbers, without taking into consideration the fundamentals of profitability--housing density, market penetration, programming costs, construction costs and pole rental rates--is utterly arbitrary and unsupportable by any standard accounting or accepted rate setting methodology.

Rural systems in which I am an owner expose as few as 20 homes per mile of plant. Much of that plant is underground (and costs much more to install than aerial plant). Consider how obviously unfair it is that our company, which serves 3100 customers, passes 33 homes per mile, pays as much as \$13.71 pole rental rate and 40 percent higher programming rates (estimated), is treated the same in the Report and Order as a neighboring system which serves 90,000 customers, passes 100+ homes per mile, pays a \$2.30 pole rental rate and gets a tremendous MSO discount on programming. This amounts to discrimination against the small operator and our

customers, contrary to the language and legislative history of the Cable Act.

Given the high costs and inefficiencies of operating cable systems in small towns and rural areas, the Commission should provide for drastically simplified compliance requirements for communities of fewer than 10,000 subscribers, and systems serving fewer than 1,000 subscribers should be granted total relief from complicated rate regulation and all but the most rudimentary customer service guidelines. Otherwise, the Commission's implementation of the Cable Television Consumer Protection and Competition Act of 1992 is destined to destroy the financial and functional viability of numerous small cable systems. And having accomplished that (unintended) result, how shall anyone in Congress or the Commission be able to justify the diminished service, the loss of small business investment and, in some cases, the loss of jobs in hundreds of America's rural communities?

#### RELIEF REQUESTED

In summary, this Petition asks that any cable rate regulation be made simple and rational, based upon thorough, valid data; that cable operators be free to enjoy the same return on investment as those in any other enterprise that

faces a variety of business and technological uncertainties; that systems serving fewer than 10,000 customers be granted simplified compliance requirements and those serving fewer than 1,000 customers be subjected to an even more simplified federal oversight, and that every provision of the Commission's Report and Order be vacated and/or revised, as necessary, to conform to Constitutional guarantees of property rights and rights of freedom of expression.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley M. Searle", written in a cursive style.

Stanley M. Searle  
President  
Pioneer Cable, Inc.